

July 2021

## A Few Highlights on Federal Appellate Practice

G. Walter Bowman

Follow this and additional works at: <https://digitalcommons.du.edu/dlr>

---

### Recommended Citation

G. Walter Bowman, A Few Highlights on Federal Appellate Practice, 19 Dicta 253 (1942).

This Article is brought to you for free and open access by the Denver Law Review at Digital Commons @ DU. It has been accepted for inclusion in Denver Law Review by an authorized editor of Digital Commons @ DU. For more information, please contact [jennifer.cox@du.edu](mailto:jennifer.cox@du.edu), [dig-commons@du.edu](mailto:dig-commons@du.edu).

# A Few Highlights on Federal Appellate Practice

BY G. WALTER BOWMAN\*

---

## APPENDIX OF FORMS

	Page
1. Notice of Appeal.....	254
2. Notice of Plaintiff's Designation of Portion of Record on Appeal .....	255
3. Designation of Portions of Record on Appeal.....	256
4. Order Enlarging Time for Filing Record on Appeal.....	258
5. Civil Bond on Appeal.....	259
6. Supersedeas Bond on Appeal.....	260
7. Criminal Bond on Appeal.....	261
8. Justification of Surety.....	262
9. Order Relative to Transmittal of Exhibits to the Circuit Court of Appeals.....	263
10. Statement of Points Relied on on Appeal.....	264

---

\*Of the Denver bar and clerk of the United States district court for the district of Colorado. This appendix of forms is supplemental to Mr. Bowman's article appearing in the September, 1942, issue of DICTA.

*Notice of Appeal.*

IN THE DISTRICT COURT OF THE UNITED STATES  
FOR THE DISTRICT OF COLORADO

BLANK COMPANY,

vs.

*Plaintiff,*

RALPH NICHOLAS, Individually and as Col-  
lector of Internal Revenue for the District  
of Colorado,

*Defendants.*

Civil No. ....

NOTICE OF APPEAL

Notice is hereby given that Blank Company, a corporation, plain-  
tiff above named, hereby appeals to the Circuit Court of Appeals of  
the United States for the Tenth Circuit, from the final judgment en-  
tered in this action on May 1, 1942, in favor of the above named de-  
fendant.

GEORGE MCGILLICUDDY,

*Attorney for Plaintiff (Appellant).*

ADDRESS: Equitable Building,  
Denver, Colorado.

*Notice of Plaintiff's Designation of Portion of Record on Appeal.*

IN THE DISTRICT COURT OF THE UNITED STATES  
FOR THE DISTRICT OF COLORADO

BLANK COMPANY,

vs.

RALPH NICHOLAS, Individually and as Col-  
lector of Internal Revenue,

*Plaintiff,*

*Defendants.*

Civil No. \_\_\_\_\_

NOTICE OF PLAINTIFF'S DESIGNATION  
OF PORTIONS OF  
RECORD ON APPEAL

*To Martin J. Stuart, Esq., Attorney for the above named defendants:*

Notice is hereby given that in connection with the appeal of the above named plaintiff from the judgment of the court entered on May 1, 1942, notice of which appeal was filed in said court on July 25, 1942, the plaintiff on said day filed its designation of portions of record of proceedings and evidence to be contained in the record on such appeal pursuant to Rule 75 (a) of the Federal Rules of Civil Procedure, a copy of which designation is herewith served upon you pursuant to said rule.

Dated at Denver, Colorado, July 27, 1942.

GEORGE MCGILLICUDDY,

*Attorney for Said Plaintiff (Appellant).*

ADDRESS: Equitable Building,  
Denver, Colorado.

Received a copy of the above notice and a copy of the praecipe therein referred to at Denver, Colorado, this 27th day of July, 1942.

MARTIN J. STUART,

*Attorney for Defendants (Appellees).*

*Designation of Portions of Record on Appeal.*

IN THE DISTRICT COURT OF THE UNITED STATES  
FOR THE DISTRICT OF COLORADO

BLANK COMPANY,

*Plaintiff,*

vs.

RALPH NICHOLAS, Individually and as Col-  
lector of Internal Revenue for the District  
of Colorado,

*Defendants.*

Civil No. ....

DESIGNATION OF  
PORTIONS OF  
RECORD ON APPEAL

In connection with the appeal of the judgment in the above-entitled action to the United States Circuit Court of Appeals for the Tenth Circuit, the Clerk of the District Court shall prepare in accordance with the Rules of Civil Procedure for the District Court of the United States, and transmit to said Circuit Court of Appeals, the record composed of the following, as provided by Rule 75:

1. Complaint, filed March 20, 1941.
2. Answer of defendants, filed June 3, 1941.
3. Trial orders of November 24, 25 and 27, 1941. (Include statement "Entered on the docket" after each order.)
4. Transcript of testimony at the trial, filed herewith. (In lieu of making copies of the several exhibits offered or introduced in evidence, the plaintiff (appellant) requests that the original exhibits shall be transmitted to said Circuit Court of Appeals pursuant to Rule 75 (i) of said Rules of Civil Procedure.)
5. Memorandum Opinion of court, filed February 25, 1942. (Include statement "Entered on the docket" after this order.)

6. Court's findings of fact and conclusions of law, filed April 30, 1942. (Include statement "Entered on the docket" at end of said findings of fact and conclusions of law.)
7. Judgment entered May 1, 1942. (Include at end of order, statement "Entered on the docket May 1, 1942".)
8. Additional memorandum by the court, filed May 4, 1942. (Include statement "Entered on the docket", etc.)
9. Objections and exceptions to findings of fact and conclusions of law and judgment, filed May 11, 1942.
10. Plaintiff's motion for amendment of court's findings of fact and for additional findings and for amendment of its judgment accordingly, filed May 11, 1942.
11. Stipulation re hearing thereon, filed June 11, 1942.
12. Order overruling the aforesaid objections, exceptions and motion, entered June 17, 1942. (Include "Entered on the docket", etc.)
13. Notice of appeal, filed this date.
14. Bond for costs on appeal, filed this date.
15. Statement of points relied on by appellant.
16. This designation of portions of record on appeal.

GEORGE MCGILLICUDDY,  
*Attorney for Plaintiff (Appellant).*

ADDRESS: Equitable Building,  
Denver, Colorado.

*Order Enlarging Time for Filing Record on Appeal.*IN THE DISTRICT COURT OF THE UNITED STATES  
FOR THE DISTRICT OF COLORADO

BLANK COMPANY,

vs.

*Plaintiff,*

Civil No. \_\_\_\_\_

RALPH NICHOLAS, Individually and as Col-  
lector of Internal Revenue for the District  
of Colorado,*Defendants.*ORDER ENLARGING  
TIME FOR FILING  
RECORD ON APPEAL

At this day comes Blank Company, Plaintiff, by George McGill-  
cuddy, Esquire, its attorney,

And thereupon, on its motion and for good cause shown, it is  
ordered by the court that the time for filing the record on appeal in  
the United States Circuit Court of Appeals for the Tenth Circuit be,  
and the same is hereby enlarged and extended to and including the  
15th day of September, A. D. 1942.

J. FOSTER SYMES,

*United States District Judge.*

NOTE: This order should be prepared in duplicate, and the judge's signature ob-  
tained on both copies, so that one copy may be filed in this court and one copy, or  
duplicate original, may be filed in the office of the Clerk of the U. S. Circuit Court  
of Appeals.

*Civil Bond on Appeal.*

DISTRICT COURT OF THE UNITED STATES  
DISTRICT OF COLORADO SITTING  
AT DENVER

Civil Case No. ....

KNOW ALL MEN BY THESE PRESENTS, That we, Blank Company, as principal, and Richard Roe Bonding and Insurance Company, as surety, are held and firmly bound unto Ralph Nicholas, individually and as Collector of Internal Revenue in and for the District of Colorado, in the full and just sum of Two Hundred Fifty Dollars (\$250.00), to be paid to the said Ralph Nicholas, Individually and as Collector of Internal Revenue in and for the District of Colorado, or his successors, to which payment well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally by these presents. Sealed with our seals and dated this second day of June in the year of our Lord one thousand nine hundred and forty-two.

WHEREAS, lately at the November term, A. D. 1941, of the District Court of the United States for the District of Colorado, sitting at Denver, in a suit pending in said Court between Blank Company, a corporation, Plaintiff, and Ralph Nicholas, Individually and as Collector of Internal Revenue in and for the District of Colorado, Defendant, judgment was rendered against the said Blank Company, and the said Blank Company having prayed and been allowed an appeal to the United States Circuit Court of Appeals for the Tenth Circuit to reverse the judgment in the aforesaid suit; and a citation directed to the said Ralph Nicholas, Individually and as Collector of Internal Revenue in and for the District of Colorado, citing and admonishing him to be and appear in the United States Circuit Court of Appeals for the Tenth Circuit, at the City of Denver, Colorado, forty days from and after the date of said citation.

Now, the condition of the above obligation is such, that if the said Blank Company shall prosecute said appeal to effect, and answer all damages and costs, if it fail to make good its plea, then the above obligation to be void, else to remain in full force and virtue.

Sealed and delivered in presence of—

BLANK COMPANY (SEAL)

BY JOHN DOE, President,

(CORPORATE SEAL)

RICHARD ROE BONDING AND  
INSURANCE COMPANY,

Approved: July 25, 1942

BY RICHARD ROE, Attorney-in-Fact.

J. FOSTER SYMES,

*United States District Judge.*

NOTE: The approval of the trial judge need not be obtained on bonds for the sum of \$250.00 or less. Power of attorney of the person signing for the surety company must be filed in the court.



*Supersedeas Bond on Appeal.*

DISTRICT COURT OF THE UNITED STATES  
DISTRICT OF COLORADO  
SITTING AT DENVER  
Case No. ....

KNOW ALL MEN BY THESE PRESENTS, That we, Blank Company, as principal, and Richard Roe Fidelity and Guaranty Company, a Colorado corporation, as surety, are held and firmly bound unto Ralph Nicholas, individually and as Collector of Internal Revenue for the District of Colorado, in the full and just sum of Five Thousand and No/100 Dollars (\$5,000.00), to be paid to the said Ralph Nicholas, individually and as Collector of Internal Revenue for the District of Colorado, or his successor, to which payment well and truly to be made, we bind ourselves, our heirs, executors, and administrators jointly and severally, by these presents. Sealed with our seals and dated this 1st day of August, in the year of our Lord one thousand nine hundred and forty-two.

WHEREAS, lately at the November term, A. D. 1941, of the District Court of the United States, for the District of Colorado, sitting at Denver, in a suit pending in said court between Blank Company, Plaintiff, and Ralph Nicholas, individually and as Collector of Internal Revenue for the District of Colorado, Defendant, judgment was rendered against the said Blank Company, Plaintiff, and the said Blank Company has taken an appeal to the United States Circuit Court of Appeals for the Tenth Circuit to reverse the judgment in the aforesaid suit.

Now the condition of the above obligation is such, that if the said Blank Company shall prosecute said appeal to effect, and answer all damages and costs, if he fail to make good his plea, then the above obligation to be void, else to remain in full force and virtue.

Sealed and delivered in presence of—

BLANK COMPANY (SEAL),  
By JOHN DOE, President.

(CORPORATE SEAL)

RICHARD ROE FIDELITY AND  
GUARANTY COMPANY,

By JOHN FINNICUM, Attorney-in-Fact.

Approved: August 5, 1942

J. FOSTER SYMES,  
*United States District Judge.*

NOTE: If bond is in the amount of \$250.00 or less, the trial judge need not approve the same. Power of attorney must be filed along with bond, if not theretofore filed.

*Criminal Bond on Appeal.*

DISTRICT COURT OF THE UNITED STATES  
DISTRICT OF COLORADO  
SITTING AT DENVER  
Case No. ....

KNOW ALL MEN BY THESE PRESENTS, That we, Joe Doaks, as principal, and Mary Smith and Anna Jones, as sureties, are held and firmly bound unto The United States of America in the full and just sum of Twenty-five Hundred Dollars (\$2500.00), to be paid to the said The United States of America, to which payment well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents. Sealed with our seals and dated this 4th day of August, in the year of our Lord one thousand nine hundred and forty-two.

WHEREAS, lately at the May Term, A. D. 1942, of the District Court of the United States, for the District of Colorado, sitting at Denver, in a suit pending in said Court between The United States of America, Plaintiff, and Joe Doaks, Defendant, a judgment and sentence was rendered against the said Joe Doaks, and the said Joe Doaks has taken an appeal to the United States Circuit Court of Appeals for the Tenth Circuit to reverse the judgment and sentence in the aforesaid case.

Now the condition of the above obligation is such that if the said Joe Doaks shall appear either in person or by attorney in the United States Circuit Court of Appeals for the Tenth Circuit on such day or days as may be appointed for the hearing of said cause in said court and prosecute his said appeal, and shall abide by and obey all orders made by the United States Circuit Court of Appeals for the Tenth Circuit in said cause, and shall surrender himself in execution of the judgment and sentence appealed from as said court may direct, if the judgment and sentence against him shall be affirmed, or the appeal is dismissed; and if he shall appear for trial in the District Court of the United States for the District of Colorado on such day or days as may be appointed for a retrial by said District Court and abide by and obey all orders made by said Court provided the judgment and sentence against him shall be reversed by the United States Circuit Court of Appeals for the Tenth Circuit, then the above obligation to be void, otherwise to remain in full force, virtue and effect.

JOE DOAKS (SEAL)  
*Principal.*  
MARY SMITH (SEAL)  
ANNA JONES (SEAL)

Approved: August 4, 1942.  
J. FOSTER SYMES,  
*United States District Judge.*

*Justification of Surety.*

UNITED STATES OF AMERICA }  
DISTRICT OF COLORADO } ss.

Mary Smith, surety on the within and foregoing bond, being first duly sworn upon oath deposes and says:

That she resides at 4320 Vallejo Street, Denver, Colorado; that she is a freeholder in the District of Colorado and that she is worth the sum of Five Thousand (\$5,000.00) Dollars over and above all her just debts and liabilities in property, subject to execution and sale and that her property consists of:

Lot 5 and South Half of Lot 4, Block 1, Van Camp's Addition,  
City and County of Denver, Colorado,

assessed valuation \$3,050.00, free and clear of encumbrances.

That she is not surety on more than two bail bonds in any Court.

MARY SMITH,  
*Surety.*

Subscribed and sworn to before me this 4th day of August, A. D.  
1942.

(U. S. COMMISSIONER'S  
SEAL)

HAROLD S. OAKES,  
*United States Commissioner.*

NOTE: There should be one of these justifications for each of the sureties signing the bond.

*Order Relative to Transmittal of Exhibits.*

IN THE DISTRICT COURT OF THE UNITED STATES  
FOR THE DISTRICT OF COLORADO

BLANK. COMPANY,	} Plaintiff,	Civil No. ....
vs.		ORDER RELATIVE TO
RALPH NICHOLAS, Individually and as Col-	} Defendants.	TRANSMITTAL OF
lector of Internal Revenue for the District of		EXHIBITS TO THE
Colorado,		UNITED STATES
		CIRCUIT COURT OF
		APPEALS FOR THE
		TENTH CIRCUIT

The plaintiff above named, having appealed from this Court's judgment in the above entitled case, entered May 1, 1942, and the court being of opinion that the original exhibits introduced at the trial of this cause are not subject to reproduction and should be sent to the said Court of Appeals for inspection in lieu of copies, it is

ORDERED, That pursuant to Rule 75 (i) of the Federal Rules of Civil Procedure, all original exhibits introduced at the trial of this cause shall be transmitted (in lieu of copies) by the Clerk of this court to said Court of Appeals as a part of the record on such appeal, and to be returned to this court upon final determination of such appeal.

BY THE COURT:

J. FOSTER SYMES,  
*United States District Judge.*

Approved:

GEORGE MCGILLICUDDY,  
*Attorney for Plaintiff.*

MARTIN J. STUART,  
*Attorney for Defendants.*

*Statement of Points Relied on on Appeal.*

IN THE DISTRICT COURT OF THE UNITED STATES  
FOR THE DISTRICT OF COLORADO

BLANK COMPANY,

vs.

RALPH NICHOLAS, Individually and as Col-  
lector of Internal Revenue for the District  
of Colorado,

*Plaintiff,**Defendants.*

Civil No. ....

STATEMENT OF  
POINTS RELIED ON  
ON APPEAL

Plaintiff (appellant) believes that it has designated for inclusion the complete record of proceedings and evidence in the action, and therefore Rule 75 (d) of the Rules of Civil Procedure relative to a "Statement of Points" does not apply.

However, and without waiver of that question, it makes the following statement of points on which it will rely:

- (1)
- (2)
- (3)
- (4)

GEORGE MCGILLICUDDY,  
*Attorney for Plaintiff (Appellant).*

To Be Sure—

**THE  
COLORADO  
GRAPHIC**

for legal advertising  
KEystone 4011  
223 Colorado Bldg.

PLACE ADAMS COUNTY LEGALS IN

**THE ADAMS COUNTY  
REPUBLICAN**

Official Paper for Adams County  
Kindly Designate Our Paper for Any  
Legal Notices Appearing in  
Adams County

Your cooperation will be highly appre-  
ciated and we can assure you satisfac-  
tion and service in return.

B. GALEN GAUNT, Publisher  
Brighton, Colorado

*Dicta Advertisers Merit Your Patronage*

## The Daily Journal

The Recognized Medium for  
Legal Advertising

1513 Tremont Place

KEystone 4969

## Herbert Fairall

Surety Bonds

1513 Tremont Pl. MA. 4843

Denver, Colorado

PHOTOSTAT COPIES FOR EVERY PURPOSE

## COMMERCIAL COPYING CO.

1438 Tremont Place

KEystone 2448

Denver

INVESTIGATE . . . The Low Cost of Our  
Complete Funeral Service

## HOFMANN MORTUARY, Inc.

601 Broadway

KE. 2237

Compliments of

## Fred West-Hall

Insurance and Surety Bonds

California Bldg.

KE. 1301

Denver

## Whitehead & Vogl

Specialists in

Patent, Trade Mark and  
Copyright Practice

Suite 806 Patterson Building

Phone MAin 4138

Patents Obtained in U. S. and Foreign Countries  
Trade Marks Registered and Copyrights Secured

TABor 5046

## HOMER G. SWEET

Registered Patent Attorney  
PATENTS and PATENT CAUSES

## WILLIAM B. KING

Successors to A. J. O'BRIEN Counsel  
601-610 Interstate Trust Building Denver, Colo.

## H. G. REID ELECTRIC SHOP

CONTRACTING — REPAIRING — FIXTURES

329 14th Street

MAin 2303

*Dicta Advertisers Merit Your Patronage*

ATTORNEYS - - -

If You Really Like Good Food — Lunch  
and Dine at

## Miss Gabriel's Restaurant

"Serving Traditionally Good Food"

94 South Broadway  
Phone PEarl 9915

Will pay cash for

### REAL ESTATE

Large or small, clear or mortgaged, or  
Sell on commission basis.

Personal attention to those in need of  
quick, efficient and practical real estate  
rental or selling service, loans and in-  
surance.

**OLIVER T. McINTOSH**

President

GLOBE REALTY CO.

1658 Broadway

TA. 6235

## MILLER MIMEO MART

MISS FRANCES MILLER

Mimeographing - Multigraphing  
Mailing

All Work Personally Supervised by  
Miss Miller

512-13 Denham Bldg. CH. 7400-7409  
Denver

THE

## WILLIAM J. BURNS

INTERNATIONAL DETECTIVE  
AGENCY, Inc.

Officially Representing

The American Bankers Association  
The Colorado Bankers Association  
The American Hotel Association

223 Colo. Natl. Bank Bldg.  
Denver, Colo.

For Service Call MAIn 4439

Nights Call PEarl 9346

R. M. Ellis, Manager

AN

OFFICE BUILDING

OF

DISTINCTION

## SYMES BUILDING

Class "A" Fireproof

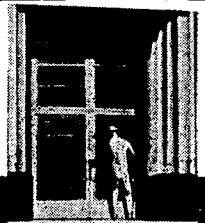
EXCELLING IN . . .

ELEVATORS - SERVICE

LAW LIBRARY

Sixteenth Street at Champa

SPEED and ACCURACY . . . the  
priceless ingredients of every  
LANDON ABSTRACT.



*The* **TITLE GUARANTY Co.**  
HOME OF LANDON ABSTRACTS

M. Elliott Houston, Pres.

Aksel Nielson, Exec. Vice Pres.

• 1711 •  
**California**

HAVE YOU PAID YOUR DUES?